

### REMARKS

This is in response to the Office Action mailed on June 3, 2002 in regard to the above-identified patent application. The period for response to the Office Action mailed ended on September 3, 2003. Please find filed herewith a petition for a three month extension of time. The period for response with the three month extension ends on December 3, 2003.

If for any reason the petition should become separated from this response, the Commissioner is respectfully requested to consider this a petition for any extension of time required to maintain the pendency of this patent application. In this event the Commissioner is also authorized to charge Deposit Account No. 50-1894 for any fee that may be required to maintain the pendency of this patent application.

Claims 81, 84, 86, 88, 90, and 111 have been amended above to more clearly describe Applicant's invention and put the claims in proper form for allowance. Claims 119-123 have been added. Claims 83, 85, and 87 have been cancelled and Claims 112-117 have been withdrawn. Claims 81, 82, 84, 86, 88-111, and 118-123 are pending in the present case.

As stated, Claims 119-123 have been added above. Since Applicants have previously paid for 117 total claims, including 7 independent claims, and now there are less than 117 total claims, with only 2 independent claims pending, Applicants respectfully submit that no additional claim fees are required at this time. If the Examiner believes Applicants are in error, Applicants authorize and request that any claim fee or additional claim fee due be charged to Deposit Account No. 50-1894.

### 35 USC §112 REJECTIONS

The Examiner has rejected Claims 83, 86, and 111 under 35 USC §112, first paragraph and Claims 81-118 under 35 USC §112, second paragraph. Applicants have amended Claims 81, 84, 86, 88, 90, and 111 above to more accurately describe Applicant's invention. Applicants have cancelled Claims 83, 85, and 87 and have withdrawn Claims 112-117. Applicants reserve the right to pursue the cancelled and withdrawn claims in a co-pending application. Applicant respectfully submits that this rejection has been overcome.

### 35 USC §102 REJECTIONS

The Examiner has rejected Claims 81-111, 118 under 35 USC §102(b,e) as being anticipated by McGee et al. ('695) and Cox et al. ('543). It is respectfully submitted that the Examiner should withdraw these rejections.

McGee et al. disclose an ablation device comprising an elongated shaft having several ablating elements attached to a distal end. More specifically, the ablating elements of McGee et al. are compressed onto the outer surface of the shaft (ring electrodes) or are applied to the outer surface. See col. 6, lines 13-19. The device of McGee et al. requires contact with the tissue in order to create the desired ablation.

Cox et al. disclose a plurality of cryoprobes which enable the ablation of endocardial cardiac tissue around the pulmonary vein openings through a single purse string opening. The cryoprobes are designed such that the plurality of probe designs allow for the creation of the desired lesion set through a single purse string opening. The cryoprobes transmit thermal energy to the surface of the cardiac tissue at a point of contact between the cryoprobes and the tissue; tissue contact with the cryoprobes is necessary for transmission of thermal energy. See col. 3, lines 52-58 and col. 4, lines 40-46. As with McGee et al., the devices of Cox et al. require direct contact between the ablating element and the target tissue.

In contrast, the invention of Claim 81 specifically requires, in part, "a *flexible* ablation device including a flexible body portion having an outer surface and at least one ablation element *operably disposed within* the body portion." (Emphasis added). The ablating element of the invention of Claim 81 does not require direct contact with the target tissue, as is required by the McGee et al. and Cox et al. devices. There is no teaching or suggestion in either McGee et al. or Cox et al. of a *flexible* ablation assembly having at least one ablation element *operably disposed within* the ablation assembly, as claimed in Claim 81. As stated above, the devices of both McGee et al. and Cox et al. require and depend on direct contact between the ablating element and a target tissue surface. Therefore, Applicants respectfully submit the rejection regarding Claim 81 has been overcome.

Furthermore, since Claims 82, 84, 86, 88-110 depend from Claim 81, directly or indirectly, Applicants respectfully submit the rejections above regarding Claims 81-110 have been overcome. Additionally, since newly added Claims 119-123 depend from Claim 81, directly or indirectly, Applicants respectfully submit that these claims are in condition for allowance, as well.

Regarding Claim 111, Claim 111 has been amended in similar fashion to Claim 81 where the flexible ablation assembly includes "a flexible body portion and at least one ablation element operably disposed within the body portion." For the reasons set forth above with respect to Claim 81, Applicants respectfully submit the rejection regarding Claim 111 has been overcome. Additionally, since Claim 118 depends directly from and further limits Claim 111, Applicants respectfully submit Claim 118 is in form for allowance.

In view of the above amendments and the discussion relating thereto, it is respectfully submitted that the instant application, as amended, is in condition for allowance. Early reconsideration and reexamination is respectfully requested. Applicants request that any fee or additional fee due to maintain the pendency of the above-identified case be charged to Deposit Account No. 50-1894. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully Submitted,



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